



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Dan W. Jackson  
District Attorney  
Houston, Texas

Attention: Mr. Conrad J. Landram

Dear Sir:

Opinion No. 04925  
Re: Filing fees in Harris County  
on transcript of a guardianship removed from another county.

Your letter of October 12, 1942, requesting the opinion of this department on the question whether or not the County Clerk is authorized to charge a filing fee on a transcript of guardianship removed from another county reads in part as follows:

" . . .

"I have not been able to find any authorities on the question except the following statutes which I list:

"Chap. 14, Title 69, Guardian & Ward, Art. 4290 to 4295a V. C. S. A.

"There is no express provision for the charging of filing fees by the clerk of the new county. Art. 4292 requires all accrued costs to be paid to the old county before the removal is effected. Art. 4293 requires that the clerk of the old county prepare and transmit to the new county both a transcript of the proceedings in the old county 'together with all the original papers in the case.' Under Art. 4294 the removal is not effective until the filing is completed in the new county and the clerk of the new county files his certificate to that effect in the old county. Art. 4295 provides

that when the removal is effected the new county shall proceed in the case 'as if it had been originally commenced in the said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.' It is to be noted that the statute requires a second filing in the new county but not a second recording in the new county. This distinction is important because Art. 3930, Chap. 2, Title 6I, V. C. S. A. governing official fees of the county clerk provides both a filing fee and a recording fee as follows:

"Filing each paper . . . . .	\$ .05
Recording of papers required to be recorded by them in relation to estates of decedents or wards for each 100 words . .	.10
Filing each paper except subpoenas. . . . .	.05
Docketing each application, complaint, petition or proceeding to be charged <u>but once</u> . . . . .	.10
Each certificate to any fact or facts contained in the records of his office with certificate seal when not otherwise provided for. . . . .	.50
Recording of papers required or permitted by law to be recorded not otherwise provided for, including certificate and seal, for each 100 words. . . . .	.10'

"Art. 3930 taken alone will require the charging of a filing fee for each original paper which has been transmitted from the old county to the new county. But it does not require the charging of a recording fee for any of the original papers which are required by law to be recorded because these original papers are not required to be recorded a second time. It is plain that the statute did not consider the transcript as a substitute for the original papers and this indicates that the filing of the original papers in the new county is an essential element of the removal proceedings.

"Since the statute is mandatory in this command that the original papers be filed in the new county and that the clerk of the new county certify this fact, I am of the opinion that the county clerk is required to charge a filing fee for each original paper filed in the county. Only in this way can the new county be paid for the service of the county clerk in performing one of the indispensable official services required by removal proceedings. This will not work a hardship on the estate in most cases because in most cases the removal is at the election of the guardian or some other person whose convenience will be better served by removing the case to the new county. In other words, the removal is not for the convenience of the administrative machinery of the State or county.

". . . ."

We have carefully considered your request in connection with Chapter 14, Title 69 (Articles 4290-4295a, inclusive, Vernon's Annotated Civil Statutes) and Article 3930 Vernon's Annotated Civil Statutes. After making a careful search we have failed to find any case where the appellate courts of this State have discussed or passed upon the question presented in your inquiry. We agree with the conclusion reached by you that the County Clerk is required to charge a filing fee for each original paper filed in the county to which the guardianship has been removed from another county.

Therefore, it is the opinion of this department that the County Clerk is authorized and required by the officer's salary law and the abovementioned statutes to charge a filing fee for each original paper filed in the county to which the guardianship has been removed from another county.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED OCT. 20, 1942  
GERALD C. MANN  
ATTORNEY GENERAL OF TEXAS

By: Ardell Williams  
Assistant

AW:mp

APPROVED OPINION COMMITTEE BY B.W.B.  
CHAIRMAN

WJF